APPENDIX A — *PER CURIAM* OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED DECEMBER 1, 1997

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-8493

D.C. Docket No. CV496-211

NANCY KIMBALL KRIPPENE, Individually, and as the Executrix of the Estate of Urban M. KRIPPENE, deceased,

Plaintiff-Appellant,

versus

RONALD LOWE, SR., Individually and as Chief of Police of Chatham County Police Department,

Defendant,

THE BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, CHATHAM COUNTY, GA.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

(December 1, 1997)

Appendix A

Before BLACK and BARKETT, Circuit Judges, and PROPST*, Senior District Judge.

PER CURIAM:

AFFIRMED. *See Rooney v. Watson*, 101 F.3d 1378 (11th Cir. 1996).

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* Hon. Robert B. Propst, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

APPENDIX B — JUDGMENT AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA FILED APRIL 16, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CASE NUMBER: CV496-211

NANCY KIMBALL KRIPPENE

v.

BOARD OF COMMISSIONERS OF CHATHAM
CHATHAM COUNTY, ET AL

JUDGMENT IN A CIVIL CASE

* * *

☒ This action came ~~to that of hearing~~ before the Court. The issues have been ~~tried or heard~~ considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with the decision rendered on the 16th day of April 1997 granting defendants motion for summary; judgment is hereby entered dismissing complaint with prejudice.

April 16, 1997
Date

Henry R. Crumley, Jr.
Clerk

s/ Nicole M. Thomas
(By) Deputy Clerk

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CV 496-211

NANCY KIMBALL KRIPPENE, Individually, and as the Executrix of the Estate of URBAN M. KRIPPENE, deceased,

Plaintiff,

v.

BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA and CHATHAM COUNTY, GEORGIA, Political Subdivisions of the State of Georgia,[1]

Defendants.

ORDER

I. Background

In November 1994, Chatham County Police Officer Bryan D. Smith was driving his police vehicle to work at an unjustifiably high rate of speed when he collided with Urban M. Krippene ("Urban"), who died as a result. Defts' Material Facts Not in Dispute (doc. # 27) ¶ 28; Pltf's Statement of Material Facts (doc. #37) ¶ 28. Plaintiff Nancy Kimball Krippene, Urban's wife, thereafter instituted this 42 U.S.C.

1. This caption reflects the fact that a 3/17/97 Consent Order dropped Defendant Ronald Lowe, Sr. as a party to this action.

§ 1983 action against Defendants (collectively "Chatham County" or "the County"), alleging that the County's "custom or policy" of failing to train, re-train and adequately discipline Smith in light of his lengthy record of official misconduct — much of it driving-related — proximately caused her husband's death. She also raises a wrongful death claim under Georgia law.

Defendants have moved for summary judgment, contending that (i) Krippene cannot establish a constitutional deprivation supporting relief under § 1983; and (ii) even if she could, the evidence shows that the County had no "custom or policy" of the sort alleged. Plaintiff has timely opposed the motion.

II. Analysis[2]

§ 1983 "provides a remedy against 'any person' who, under color of state law, deprives another or rights protected by the Constitution." *Collins v. City of Harker Heights, Tx.*, 503 U.S. 115, 120 (1992). Although Chatham County is a "person" for § 1983 purposes, *see id.*, it cannot be held vicariously liable for Smith's behavior; rather, it is only liable for its own wrongdoing. *Id.* at 122.

A municipality's custom or policy of failing to adequately train its employees can give rise to a constitutional violation, but only if such failure amounts to "deliberate indifference" to the "rights of persons with whom the police come into contact." *Id.* at 123-24. Absent a deprivation of constitutional dimension,

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2. This Court applies the summary judgment principles exhaustively detailed in *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993) and *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742-43 (11th Cir. 1996).

however, any failure to train, re-train, supervise or discipline is of no consequence, since § 1983 is not implicated. *See id.* at 124-30; *Rooney v. Watson*, 101 F.3d 1378, 1381 (11th Cir. 1996) ("an inquiry into a governmental entity's custom or policy is relevant only when a constitutional deprivation has occurred"); *Vineyard v. County of Murray, Ga.*, 990 F.2d 1207, 1211-1212 (11th Cir.), *cert. denied*, 510 U.S. 1024 (1993) ("Only when it is clear that a violation of specific rights has occurred can the question of § 1983 municipal liability for the injury arise"); *Lyle v. Dodd*, 857 F. Supp. 958, 967 (M.D.Ga. 1994).

The uncontroverted evidence in this case shows that when he collided with Urban, Smith was driving at a high rate of speed in a "non-emergency" and "non-pursuit" situation. *Rooney*, 101 F.3d at 1181. While reprehensible, Smith's actions do not elevate what is essentially "a state tort claim" into something more; a person injured by a policeman's grossly negligent operation of a motor vehicle " 'has no section 1983 cause of action for violation of a federal right.' " *Id.* (quoting *Cannon v. Taylor*, 782 F.2d 947, 950 (11th Cir. 1986)).

In an effort to surmount this considerable hurdle, Krippene attempts to distinguish *Rooney*:

> In *Rooney*, the [panel] did not inquire into Volusia County's policy and custom relating to patrol vehicle operation and training, since it determined that Deputy Watson's conduct did not cause the [plaintiffs] to suffer [a] [c]onstitutional deprivation. In the instant [c]ase[,] it must be remembered that the Plaintiff[ ] do[es] not allege [ ] that it was Officer Smith's conduct that caused Mr. Krippene to suffer [a] [c]onstitutional deprivation, but rather it was

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> Chatham County's conduct, as demonstrated by [its] policy and custom relating to operation of patrol vehicles in violation of State law, that caused Mr. Krippene to suffer a [c]onstitutional deprivation. The *Rooney* decision did not even address the liability of the County with regard to [a] [c]onstitutional deprivation.

Pltf's Reply to Mot. for Summary Judgment (doc. # 36) at 13. As discussed earlier, the absence of a constitutional violation renders any inquiry into "custom or policy" superfluous. The *Rooney* panel did not address Volusia County's liability because it had already found that the defendant officer did not impinge upon the plaintiffs' federal rights.[3]

Krippene additionally implies that the omission of Smith as a name Defendant somehow makes her case different from *Rooney*. Yet, in attempting to hold Chatham County liable, she cannot — contrary to her suggestions — turn a blind eye to Smith's conduct; in fact, without his actions, she has no standing to sue. "[T]he statutory language of § 1983 necessitates proof of an affirmative casual connection between the actions taken

3. While the Eleventh Circuit has spoken definitively on this point, other circuits have split on the issue. *Compare Fagan v. City of Vineland*, 22 F.3d 1282, 1293-94 (3d Cir. 1994) ("We hold that a municipality can be liable under section 1983 and the Fourteenth Amendment for a failure to train its police officers with respect to high-speed automobile chases, even if no individual officer participating in the chase violated the Constitution"), *with Temkin v. Frederick County Commissioners*, 945 F.2d 716, 724 (4th Cir. 1991), *cert. denied*, 502 U.S. 1095 (1992) ("A claim of inadequate training under section 1983 cannot be made out against a supervisory authority absent a finding of a constitutional violation on the part of the person being supervised").

under color of state law and the constitutional deprivation." *Gay v. City of Daleville*, 953 F. Supp. 131, 1332 (M.D.Ala. 1996). Indeed, even if a municipality adheres to a deplorable custom or policy, § 1983 does not provide a means of redress unless the plaintiff can also establish the requisite casual link. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) ("If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations have *authorized* the use of constitutionally excessive force is quite beside the point") (emphasis in original); *Vineyard*, 990 F.2d at 1213 ("The existence of an official policy [alone] is insufficient to impose [§ 1983] liability on the county," as plaintiff "must also show that the policy was the moving force of the constitutional violation"); *Thompson v. Boggs*, 33 F.3d 847, 859 n.7 (7th Cir. 1994), *cert. denied*, 115 S. Ct. 1692 (1995). Given that Krippene lacks a constitutional peg on which to hang her § 1983 hat, she cannot satisfy this element of causation. Defendants, therefore, are entitled to summary judgment.

As Plaintiff well recognizes, *see* doc. # 36 at 24, "[t]he decision of whether to dismiss a complaint still containing state law issues after all federal causes evaporate is within the district court's sound discretion." *Flint Elec. Membership Corp. v. Whitworth*, 68 F.3d 1309, 1314 (11th Cir. 1995), *modified on other grounds*, 77 F.3d 1321 (11th Cir. 1996); *see also* 28 U.S.C. § 1367(c). In Georgia, the statute of limitations for a wrongful death action is two years. *See Gray v. Armstrong*, 474 S.E.2d 280, 281 (Ga. App. 1996); *Burns v. Radiology Assocs. of Gwinnett, P.C.*, 446 S.E.2d 76, 77 (Ga. App. 1994). By filing the instant matter in August 1996, Krippene beat the limitations clock by at least two months and tolled that period to boot. *See* 28 U.S.C. § 1367(d), *U.S. Anchor Mfg., Inc. v.*

Rule Industries, Inc., 7 F.3d 986, 1005 (11th Cir. 1993), *cert. denied*, 512 U.S. 1221 (1994) ("Under 28 U S.C. § 1367(d), the statute of limitations would be tolled while the claims were pending until 30 days after an order of dismissal, thus allowing the plaintiff time for filing a new action in state court without a lapse of its rights"); *Edwards v. Okaloosa County*, 5 F.3d 1431, 1433 n.1 (11th Cir. 1993), *modified on other grounds*, 12 F.3d 358 (11th Cir. 1994); *Linder v. Richmond County, Ga.*, 844 F. Supp. 764, 769 (S.D.Ga.), *aff'd*, 38 F.3d 574 (11th Cir. 1994). Because she will not suffer prejudice form the dismissal of her remaining claim, the Court so exercises its discretion.

III. Conclusion

Accordingly, Defendants' motion for summary judgment (doc. # 25) is **GRANTED.** Plaintiff Nancy Kimball Krippene's complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED, this 16th day of April, 1997

s/ B. Avant Edenfield
B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

APPENDIX C — DENIAL OF PETITION FOR REHEARING AND SUGGESTION OF REHEARING EN BANC FILED FEBRUARY 23, 1998

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-8493

NANCY KIMBALL KRIPPENE, individually, and as Executrix of the Estate of URBAN M. KRIPPENE, deceased,

Plaintiff-Appellant,

versus

RONALD LOWE, SR., Individually and as Chief of Police of Chatham County Police Department,

Defendant,

THE BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, CHATHAM COUNTY, GA.

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, ___ F.2d ___).

Appendix C

Before: BLACK and BARKETT, Circuit Judges, and PROPST**, Senior District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ [illegible] Barkett
UNITED STATES CIRCUIT JUDGE

** Hon. Robert B. Propst, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

APPENDIX D — BRYAN SMITH TERMINATION LETTER

CHATHAM COUNTY POLICE DEPARTMENT
7606 HODGSON MEMORIAL DRIVE
SAVANNAH, GEORGIA 31406

RONALD LOWE, SR.
CHIEF OF POLICE
TELEPHONE (912) 652-6500

January 12, 1995

Apo. B. D. Smith
126 Neva Bluff Drive
Savannah, Georgia 31406

Dear Apo. Smith:

This letter will serve as an official written notification of my decision to recommend, and the County Manager's approval, to dismiss you from employment from the Chatham County Police Department effective immediately. The decision to terminate your employment is based on your violation of S.O.P. #10-040 and for violation of the Chatham county Personnel Ordinance Section III-108.2. I refer specifically to an incident which occurred on November 18, 1994, while you were enroute to work in your police unit, you were involved in an automobile accident. An Internal Affairs Investigation of this accident revealed that at the time of impact you [sic] traveling at a high rate of speed. This action is a direct violation of Department Policy.

Since your transfer from the Chatham County Sheriff's Department to the Chatham County Police Department on

Appendix D

April 13, 1991, your personnel record is laden with repeated incidents of poor judgement, negligence and failure to follow departmental policy as noted below:

June 29, 1991	Inability to follow instructions and complete reports. Disposition, oral reprimand. Told to improve, if not would be terminated.
July 9, 1991	Ofc. Smith received oral reprimand because he failed to have his police unit serviced.
August 10, 1991	Ofc. Smith is involved in an auto accident, contributing factor failure to yield. Ofc. Smith is at fault, disciplinary action, three (3) days take home privileges revoked.
August 23, 1991	Bad progress report. Disposition, counseled.
September 4, 1991	Pursuit policy, auto chases. Disposition, counseled.
September 13, 1991	Harassment complaint, handled by Internal Affairs. Disposition, none.
October 24, 1991	Overall work performance. Disposition, counseled.
October 24, 1991	Slow response to calls. Disposition, counseled.

Appendix D

November 7, 1991	Complaint, nasty & prejudiced. No disposition. Sick for regular duty. Disposition, oral reprimand.
January 29, 1992	Involved in auto accident at Skidaway Road near Ferguson Avenue, code three (3) call. Disposition, no violation of Department rules, no action taken.
February 7, 1992	Completed Basic Emergency Vehicle Operation Course.
February 27, 1992	Disregarding orders. Disposition, oral reprimand.
April 20, 1992	Involved in auto accident. Struck another vehicle in the rear. Contributing factor: following too close. Disciplinary action, 14 days take home privileges revoked, civil action pending.
May 12, 1992	Speeding in police unit, clocked on radar twice within 45 minutes. Each time approximately 30 miles per hour over posted speed limit. Disciplinary action, 30 days take home privileges revoked.
May 22, 1992	Due to military leave and take home privileges being revoked, it was recommended that an additional two weeks be added to take home privileges and that if there be any more accidents, Ofc. Smith be terminated. It appears that we are dealing with a negative retention problem.

Appendix D

July 2, 1992	Poor work performance. Disposition, counseled.
September 27, 1992	Slow response to calls. Disposition, counseled.
October 20, 1992	Complaint, rude and disrespectful. Disposition, oral reprimand.
January, 1993	Engine damage to unit 908, drive vehicle into high water. At briefing all troops were reminded to use caution due to high water in areas. Disciplinary action, 180 days take home privileges revoked.
February 14, 1993	Making traffic stops while enroute to assigned call. Disposition, counseled.
February 15, 1993	Sick leave abuse. Disposition, none.
March 9, 1993	Late for work complaint. Disposition, written reprimand.
May 30, 1993	Out of uniform, not responding to duty. Disposition, written reprimand.
August 6, 1993	Unfamiliar with divisions and street. Disposition, counseled and told that recurrence would result in disciplinary action.
September 26, 1993	Auto accident, Spanky's parking lot in Pooler. No disposition.

Appendix D

January 8, 1994 — Auto accident Krystal's parking lot, Garden City. No disposition.

Your actions show a pattern of reckless disregard for public safety on the highways of Chatham County. This is not only a violation of Departmental Policy forbidding county Police units from traveling at a rate of speed greater than the posted speed, but also a violation of the County Personnel Ordinance requiring persons who operate County vehicles to do so following the principles of defensive driving and advising the possible penalty for unsafe or unlawful operation. Your actions greatly endangered yourself and resulted in the death of a citizen.

Because you are a full-time regular employee of Chatham County, you have the right to appeal this decision to the Personnel Advisory Board within ten (10) days after receipt of this letter. Any appeal must be forwarded through the Human Resources Director.

Sincerely,

s/ Ronald Lowe, Sr.
Ronald Lowe, Sr.
Chief of Police

RL/CSH/seh

cc: R.E. Abolt, County Manager
Beverly M. Whitehead, Human Resources
Personnel File

APPENDIX E — TWO YEAR PERFORMANCE EVALUATION BY THE CHATHAM COUNTY SHERIFFS' DEPARTMENT

INTER-OFFICE CORRESPONDENCE

DATE: March 19, 1991

TO: Deputy Bryan Smith

FROM: Undersheriff Donald E. Anderson

SUBJECT: Performance Evaluation

Your two (2) year evaluation is totally unacceptable. Your supervisors, Lt. Powell, Sgt. Hood and Sgt. Cutchens agree that there has been an obvious decline in performance since your last evaluation.

Based on this information, I find it necessary to return you to probationary status for a period of three (3) months. This action is within the guidelines of our County Personnel Handbook, Section II-104-2g.

Your increase in pay and Private stripe received at the completion of two (2) successful years of service will be delayed until June 30, 1991. Your performance will be evaluated at the end of this period and a decision made as to your employment status.

cc: Sheriff Walter Mitchell, Jr.
Human Resources

APPENDIX F — DEPOSITION OF ACCIDENT RECONSTRUCTIONIST CORPORAL SCOTT SIMPKINS pp. 25, 57

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NO. CV496-211

NANCY KIMBALL KRIPPENE, INDIVIDUALLY AND AS THE EXECUTRIX OF THE ESTATE OF URBAN M. KRIPPENE, DECEASED,

Plaintiff,

vs.

RONALD LOWE, SR., AND AS CHIEF OF POLICE OF CHATHAM COUNTY POLICE DEPARTMENT; AND BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, CHATHAM COUNTY, GEORGIA POLITICAL SUBDIVISIONS OF THE STATE OF GEORGIA,

Defendants.

Deposition of SCOTT SIMPKINS, taken by counsel for Plaintiff, pursuant to agreement of counsel and notice, under the Federal Rules of Civil Procedure, reported by Jill M. Hesterlee, CCR, B-1658, in the offices of Assistant County Attorney, 124 Bull Street, Savannah, Georgia, February 19, 1997, commencing at 3:40 p.m.

* * *

Appendix F

[25] . . . Bryan Smith versus Chatham County?

A. Yes, sir.

Q. And do you recall in that deposition that you gave an opinion as to the speed being between 70 and 75?

A. I probably did.

Q. Okay.

A. I mean, I saw it on the other page there.

Q. Right, that's what I was going to ask you about.

A. And that's what I'm saying, it could be as high as 75 miles per hour. So I kind of — when I was writing the letter to the Chief —

Q. You had given kind of the benefit of the doubt, I guess?

A. I kind of hit it right in the middle, 65 but in excess of 65, and going this one here, I might have even zeroed in at 70 or 71 miles per hour would be a —

Q. You gave the opinion in excess of 70 but less than 75, and then you said between 70 and 75 and you said, that's my opinion?

A. Right.

* * *

Appendix F

[57] . . . findings were and let him make the call. The speed limit's 45. In my opinion, he was going greater than 65. And I just kind of wrote it and gave it to the Chief.

Q. Let the Chief make the determination?

A. Right.

Q. What was your determination?

A. He was in excess of the speed limit.

Q. Do you think he was at fault for the wreck?

A. Yes.

Q. That's all I have — when we're talking about he, we mean Bryan Smith?

A. Yes.

MR. BERGEN: That's all I have.

(Exhibits from Mr. Simpkins' previous deposition was marked as Exhibit Number 1.)

(Deposition concluded at 4:46 p.m.)

APPENDIX G — DEPOSITION OF CHIEF RONALD LOWE pp. 95–104

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NUMBER CV496-211

NANCY KIMBALL KRIPPENE, Individually and as the Executrix of the Estate of URBAN M. KRIPPENE, deceased

Plaintiff

vs.

RONALD LOWE, SR., Individually and as Chief of Police of Chatham County Police Department

and

BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA

and

CHATHAM COUNTY, GEORGIA Political Subdivisions of the State of Georgia

Defendants

DEPOSITION OF
RONALD LOWE, SR.
January 22, 1997

Appendix G

* * *

[95] Identification)

A. (Examining).

Q. Exhibit 23 is the cover page of that manual.

A. Yes, cover page of the manual. Field Operations Manual, October 1, 1994. I think it's a half hour, judging by this.

Q. Where did you reference there, sir, so we can have what page of the manual.

A. Page 10 of 76.

Q. All right. Now I can take that back from you. Thank you, sir.

Officer Smith, according to your letter of January the 12th, 1995, had been late for work on March 9th of '93, for which he received a reprimand, according to your letter. Is that a fair statement?

A. Mm hmm. He, I believe, was on watch on the day of Mr. Krippene's fatality.

Q. Is that your recollection?

A. I'm not sure.

Q. Well, nonetheless, he was to be at work beginning at 3:00 o'clock that afternoon. Did you understand that to be correct?

A. Right.

Q. Are you familiar with the time of this wreck that occurred approximately around 2:30?

[96] A. I'm not sure of the time. I would have to see the accident.

Q. Here's the Accident Report. It's reported the time as being 1430 military time, which would be 2:30, correct?

A. That is correct.

Q. And the officer arrived at 2:33 that afternoon?

A. Right, 2:33.

Q. So, the time of the wreck, according to the policy Officer Smith should have already been at work, if he was to begin the 3:00 o'clock shift, correct?

A. That would be correct.

Q. So, he was already late at the time of this wreck?

A. I believe that was in the report.

Q. Did he ever explain to you that's why he was speeding, because he was late to work?

A. I'm not sure what his statement was.

(WHEREUPON, Lowe Exhibit Number 24
marked for identification.)

A. But he did give a statement.

Q. Do you recall him admitting that he, to Sergeant Thomas, that he was traveling 50 to 55 miles an [97] hour?

A. That's what Sergeant Thomas wrote, I believe.

Q. And that is contained in the Inter-Office correspondence we have marked as Exhibit Number 24, which is an Inter-Office correspondence to yourself from Sergeant A. F. Thomas. You recall receiving that, is that correct?

A. Yes, a copy of it.

Q. Now in your letter of, before you wrote your letter of January 12th, 1995, you had a full blown investigation in this matter, did you not, of the Krippene wreck?

A. Before what now?

Q. Before you wrote your letter of January 12th, 1995 terminating Mr. Smith, you had a thorough investigation?

A. We were not initiating a full blown, because it was not our jurisdiction. Savannah was doing the full blown investigation. I was doing an Internal Affairs investigation.

Q. And you relied on both of those investigations in your recommendation of termination of Bryan Smith, did you not?

A. I looked at information from both of them, yes.

[98] Q. And based on those investigations you made the determination that Bryan Smith was at fault for this collision, did you not?

A. No, I did not.

Q. Did you form an opinion?

A. On the information that I had received?

Q. Yes, sir.

A. I believe that it was due to speed.

Q. Which would be inappropriate action of Bryan Smith, would it not?

A. That's correct.

Q. And you said in your letter of January 12th, 1995, that "the decision to terminate your employment is based on your violation of S.O.P #10-040 and for violation of the Chatham County Personnel Ordinance Section III-108.2."

(WHEREUPON, Lowe Exhibit Number 25
Marked for Identification)

Handing you Exhibit Number 25, this deals with vehicle operation. You said in your letter you terminated him because he violated that policy and the County Personnel Ordinance III-108.2

Now which reference in the policy of S.O.P. #10-040 are you referencing? There are several subparts to [99] that.

A. D. Safe Driving of Police Vehicles.

Q. And you feel that based upon the information provided to you from the Internal Affairs investigation and from the city's investigation, that Bryan Smith violated that policy?

A. Right.

Q. Even though you say your decision to terminate him was based on the violation of S.O.P. #10-040 and the Personnel Ordinance, it's your testimony that you were terminating him because he had a habitual pattern of vehicle operation?

A. He was terminated because he violated that policy, which I used — what I perceived as a pattern of inappropriate behavior, unacceptable driving habits, unacceptable behavior as a policy officer, I used as a basis to use violation of standard operating procedures I did not fire him for all of these, I fired him for a collection of these, which culminated in violating S.O.P. #10-040.

The other Chatham County Personnel Ordinance deals with vehicle operations, and III–108.2 speaks for itself.

Q. Are you saying he violated both Paragraphs A and the B of that ordinance?

[100] (WHEREUPON, Lowe Exhibit Number 26 marked for identification.)

A. I said A.

Q. You didn't say in your letter "operating a county vehicle in an unsafe and unlawful manner may result in dismissal."

Appendix G

It is your testimony that based upon the Chatham County's Internal Affairs investigation, and the city's investigation, it was your belief that Mr. Smith, at the time of the Krippene accident, operated a county vehicle in an unsafe and unlawful manner?

A. It's my contention that because of this habitual, or this pattern, which shows poor judgment and all of these things, "you committed a violation against S.O.P. #10-040 as well as Personnel Ordinance EEE–108.2."

Q. So, you are saying that he violated those policies prior to the Krippene accident as well as with the Krippene accident?

A. I'm saying that these are the two specific charges he was charged with for the accident. My reason for firing him was listed below that.

Q. Well, I just want to make sure, I think we are on the same page here, but I just want to make sure that I'm clear on this in my mind.

[101] What you're telling me is that Mr. Smith, your review of Mr. Smith's record showed that he had habitually violated those policies?

A. Rules and regulations, right.

Q. The county policy ordinance and —

A. Not just these specific rules and regulations, but other —

Q. Okay, other ones?

A. — rules and regulations, which gave me a feeling that he was not cognizant of rules and regulations, as though they didn't apply to him.

Q. Okay, all right. As to the Krippene wreck, you would agree that he violated these particular, the ordinance that you referenced in your letter, as well as the S.O.P. #10–040?

A. Actually, those were the ordinances that were used, yes.

Q. With the Krippene wreck?

A. Yes.

Q. And you had also seen those, the S.O.P. and the Ordinance, Exhibits 25 and 26, being violated even before the Krippene accident once you reviewed the file in connection with the traffic —

A. Yes.

Q. And in looking at the file from '91, and all [102] the incidences involving Mr. Smith in the car, and not following orders and not adhering to rules and regulations, it appeared to be a failure to take remedial steps that were effective, by the Chatham County Police Department prior to your arrival?

MR. MAHONEY: I'll object to the form of that question. The witness has answered repeatedly that that would be speculative on his part, and he would have no way of giving you a meaningful answer to what was meaningful remedial

action at a time when he was not present and didn't know the circumstances.

Q. Well, did it appear to you that there was a failure to take remedial steps with Mr. Smith that were effective?

A. I don't know, counselor, what the remedial steps were that were taken. All I was basically saying to you is that in going through his jacket these violations and reports were in there. My experience has taught me that certain incidents that typically happen need to be addressed, if it's unacceptable behavior.

Now before I got here, or before I got there, I didn't question Davin, as he was the Acting Chief, what was done with Bryan Smith, because Bryan Smith did not come to my attention until he started getting discipline [103] for major offenses — minor offenses, no, I'm not going to go through a jacket and go back through somebody's history. If it's a major offense, then that should stick out like a sore thumb, because it's usually consistent. If it is not consistent, then you have a problem. This back here — not my problem.

Q. When you say "this back here," those are what you call major incidences were brought to at least the Major's level, and the Chief's before you arrived?

A. Well, that's what I'm saying. These are the people you need to talk to about that.

Q. Let me ask you this. From looking at the jacket, when you did look at it, don't you agree that this showed a pattern of similar incidences in which citizens could have been

endangered by the unacceptable police conduct of Bryan Smith in operating police vehicles?

A. Any policy, this policy and this policy, and even the policy here demands that — or exhibits that if these rules and regulations are not followed there is a possibility that someone could get hurt or killed.

Q. But isn't it true that from looking at — and you can explain anyway you want to — but it's either yes or no, and you can explain — in looking back at his jacket, and as a Chief, and from your experience, that [104] his personnel file showed a pattern of similar incidences in the operation of police vehicles in which citizens of Chatham County could have been either injured or endangered by the unacceptable conduct of Bryan Smith?

A. And I have answered that.

Q. Yes or no?

A. I said yes.

Q. Now in your letter you stated that "your actions showed a pattern of reckless disregard for public safety on the highways of Chatham County."

And that was your opinion on January 12th of '95, and still is today, is it not?

A. Yes, I still believe that.

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Q. Now you further state, "this is not only a violation of the Departmental Policy forbidding County Police units from traveling at a rate of speed greater than the posted speed, but also a violation of the County Personnel Ordinance requiring persons who operate County vehicles to do so following the principles of defensive driving and advising the possible penalty for unsafe or unlawful operation."

So, that sentence you were specifically referring to the Krippene wreck, were you not? Or were you referring to Krippene and prior incidences?

A. This is directed to the wreck.

* * *

APPENDIX H — DEPOSITION OF CHIEF RONALD LOWE pp. 36, 37, 39, 44, 45, 56, 79, 81, 115

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NUMBER CV496-211

NANCY KIMBALL KRIPPENE, Individually and as the Executrix of the Estate of URBAN M. KRIPPENE, deceased

Plaintiff

vs.

RONALD LOWE, SR., Individually and as Chief of Police of Chatham County Police Department

and

BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA

and

CHATHAM COUNTY, GEORGIA Political Subdivisions of the State of Georgia

Defendants

DEPOSITION OF
RONALD LOWE, SR.
January 22, 1997

Appendix H

* * *

[36] . . . would expect a Chief, that would have been reasonable for the Chief, any Chief, to do under the circumstances, to inquire?

A. Right.

Q. You mentioned something to me just a minute ago, that you want it proven to you. You wouldn't just take the piece of paper that's reported on, but you would want it proven to you that the Police Officer had a problem. I don't want to put words in your mouth, and I can't recall exactly what you said.

A. We're talking about, we are getting into those documents here.

Q. Right.

A. And what I am saying is — when you have performance — well, for documentation or a sheet of paper that says something is wrong, or even something is right, without substantiation or a document that will substantiate what that piece of paper says, then that piece of paper doesn't exist.

Q. Well, it was proven to you after Mr. Krippene's death that Bryan Smith had a habitual pattern of reckless conduct of police vehicles, wasn't it?

A. I proved it after I looked at his background.

Q. And it just didn't happen on November 18th, 1994, it had been in existence prior to that time?

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[37] A. I looked at it prior to, but I was concerned with the time since I had arrived in Savannah. And looking at taking into consideration both aspects of that, then I didn't feel that an individual that worked for the Chatham County Police Department, that was sworn to protect the citizens of that county, needed to have a background like that. So, it wasn't one particular incident.

Q. Right.

A. It was a —

Q. Pattern?

A. — pattern of incidents. But I asked for and received the information that pertained to the entries on his background.

Q. So, you would agree with me that prior to Mr. Krippene's death there was an existence in Mr. Smith's personnel file that would demonstrate a pattern of a habitual violation that could endanger the citizens of Chatham County?

A. In my opinion, yes.

Q. Do you believe that one of the Majors should have brought this to your attention beforehand? I know you were in Savannah for a period of two years.

A. Right.

Q. Do you agree with me that one of the Majors . . .

* * *

Appendix H

[39] . . . something set in place, be it discipline or whatever, some type of corrective action to see if in facet the employee will respond.

Q. And if the employee doesn't respond do you agree with me the employee should be terminated?

A. Under my consistency definition, yes.

Q. And did you see in Mr. Smith's personnel file that corrective actions that were taken didn't seem to work with him?

A. Yes, this is a fair statement.

Q. Even prior to Mr. Krippene's death the corrective action didn't seem to work with Mr. Smith?

A. That was basically one of the reasons that I recommended he be terminated.

Q. My question is, prior to Mr. Krippene's death, if you had reviewed his file and seen that the corrective action had been done, such as suspending take-home privileges, vacation days, wasn't working, don't you agree with me he should have been terminated?

A. No, I'm not saying that. If that in fact had been the reason, if the accident in fact had not been the reason for his personnel jacket being brought before me, then if his counseling or his take-home duties, or his — whatever discipline he had, then I would have looked at all of those situations. I can't speculate and say at . . .

Appendix H

* * *

[44] . . . begin to exhibit this type of behavior, then there are three courses. You can discipline, you can train or you can send them for medical treatment or medical help.

Q. Now is that up here or Chatham County?

A. I tried to insure that in Chatham County. In fact, I ordered Bryan to see a psychologist or psychiatrist during the investigation.

Q. Right. Was that by Post Command, or —

A. I'm not sure who it was. I just ordered — I just wanted that done, and one of the reasons for that is, with his background my first concern was the safety of the citizens, and I didn't think that he could perform as a Police Officer and insure the safety of the citizens in the county.

My second concern was, with him as an officer, health, looking into what was happening with him as an individual; therefore, he was ordered to go to talk to a doctor.

And, of course, the third and final was, looking at what had transpired during the time I was there, with training and with those types of things, and what we need to do as an organization to fine tune or to make some particular policy better.

Q. Do you agree with me that that should have been implemented, the steps that you took ultimately, [45] with Bryan Smith, from what you have learned from his file, should

have been implemented before Mr. Krippene's death, looking at all the habitual problems and violations?

A. I would have, yes.

Q. You would agree with me?

A. Yes. As Chief I would have tried to implement those particular types of steps at an earlier time.

Q. Right, and I understand you weren't there.

A. Right.

Q. But what I'm trying — it appeared from your Police experience, that the discipline that had been implemented for Bryan Smith was not what you call effective discipline.

A. To use that term, effective discipline, to me, and this is the way I'm interpreting what you said, I'm thinking about results.

Q. Seeing changes?

A. Result oriented.

Q. Yes.

A. That's a better term.

Q. Okay, result oriented discipline.

A. Right — right, be it termination or be it a better employee.

Appendix H

Q. What do they call it, what's the term when . . .

* * *

[56] Personnel. So, the ones that I had readily at hand were the documents in which I looked at a pattern that was forming.

So, to be consistent, which I consider as being consistent in discipline, what was working, what wasn't working. And I come to the conclusion that Bryan Smith did not follow orders, Bryan Smith had a problem driving a car. And I felt that because of the progressiveness and the types of disciplinary actions that were given to him, it was in the best interests of the county that he be terminated.

Q. That pattern, or those deficiencies which you showed from a pattern that Bryan Smith, while he worked for Chatham County Police Department, in operating the Police vehicle, existed prior to November of 1994, didn't it?

A. I believe it had to, yes.

Q. And you would agree with me that Police Officers such as Bryan Smith, in operating the police vehicles, either on duty or off duty, owe a duty to the general motoring public to be safe in the operation of the vehicles?

A. That's policy, yes.

Q. And you found that prior to November 14th, 1994, or is it the 18th?

* * *

[79] A. Yes, I did.

Q. And where did he go, for the record?

A. He's the Sheriff now.

Q. And that was an elected position?

A. Yes.

Q. Do you know of any relationship between Bryan Smith and Deanie Frazier?

A. No, I don't.

Q. Do you know if Deanie Frazier supported Chief Al St. Lawrence's campaigns for Sheriff?

A. No, I don't.

Q. Well, would you look in, and I know you weren't there in 1991 when Officer Smith was hired, in '92, as to Exhibit 16, would it indicate to you, from what's being done to Bryan Smith as a result of these incidences, and what's being said is going to be done, but isn't done, that there was a policy of not enforcing corrective action being developed in the department as to Bryan Smith?

A. I can't answer that, counselor.

Q. Well, does it appear — I mean, your opinion.

A. My opinion, and I'm giving it to you as candidly as I possibly can —

Q. And I appreciate that.

A. I can't speak for — I'm saying that in my . . .

* * *

[81] . . . tolerated. But that was starting in 1993, so —

Q. You mean '92?

A. No, I'm talkin' about when I got there.

Q. Okay.

A. I didn't have time to go through all of the records of all the officers there. I had to take them as they occurred. Eventually I would have.

Q. Well, was Bryan Smith's a problem that you inherited because the Police Officers and the department before him failed to discipline him?

A. I would say that Bryan Smith was an officer that should have been either trained more thoroughly, or gotten rid of.

Q. And that was the responsibility of the department heads and the Chief before you, is that what you are telling us?

A. I'm saying that if I had been Chief, so that's a determination that will have to be made somewhere else.

Q. What you are telling me is, because you weren't there that wasn't your responsibility at that time?

A. Once it came to my attention that this was happening then I took what I felt was the appropriate action and I terminated him.

* * *

[115] A. Not specifically. I think that the ones that are in there were more than enough, because they would have been added to this specific list.

Q. We are referring to a written reprimand issued June 29th, 1993. In your experience as an Internal Affairs — you were in charge of Internal Affairs at Dayton before you came to Savannah?

A. That's correct.

Q. Had you ever investigated a Police Officer that had such a personnel record that was laden with repeated incidences, as described in your letter of January 12th, 1995, concerning Bryan Smith?

A. I have had officers investigated. I did not investigate them myself. I was in charge of it, but I have had officers investigated that had reports similar to this.

Q. And were those officers terminated?

A. I think a couple of them were.

Q. Do you know, were there any officers that demonstrated a pattern of reckless disregard of public safety on the highways or the streets, such as Bryan Smith demonstrated?

Appendix H

A. There probably have been.

Q. You say there probably have been. I'm just asking if you recall any specific incidents in your . . .

* * *

APPENDIX I — DEPOSITION OF CORPORAL PETER L. LEOPOLD pp. 12–15

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NO.: CV496-211

NANCY KIMBALL KRIPPENE, INDIVIDUALLY AND AS THE EXECUTRIX OF THE ESTATE OF URBAN M. KRIPPENE, DECEASED,

Plaintiff,

vs.

RONALD LOWE, SR., AND AS CHIEF OF POLICE OF CHATHAM COUNTY POLICE DEPARTMENT; AND BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, AND CHATHAM COUNTY, GEORGIA POLITICAL SUBDIVISIONS OF THE STATE OF GEORGIA,

Defendants.

Transcript of Deposition of **CORPORAL PETER L. LEOPOLD,** taken by counsel for the Plaintiff at 124 Bull Street, Savannah, Georgia, reported by Lucy B. Roberts, Certified Court Reporter, on the 4th day of February, 1997, beginning at approximately 3:10 p.m.

Appendix I

APPEARANCES:

For the Plaintiff: FREDERICK S. BERGEN, ESQUIRE
123 EAST CHARLTON STREET
SAVANNAH, GEORGIA 31401

For the Defendant: EMILY GARRARD,
ASSISTANT COUNTY ATTORNEY
POST OFFICE BOX 8161
SAVANNAH, GEORGIA 31412

* * *

[12] Q. What's the next step after take home privileges, suspension?

A. It wasn't really consistent, you know. They may take your car away from you, you know, a couple of times. But it wasn't — at that time, it wasn't consistent. Now, there is a little more — a little more consistency than there was in the past, but at the time, it wasn't consistent. I mean they may take your car away from you, you know, two or three times, you know, if the accidents were minor. And, I don't know if I recall off hand, you know, in an at fault accident where there weren't any injuries or anything where they might have — might have suspended somebody.

Q. But you're saying from the period of time I'm talking about, '91 to '93, there was never —

A. — It was inconsistent.

Q. — it was inconsistent as to how discipline was administered to drivers of vehicles.

A. Right.

Q. You say now it's more consistent discipline?

A. It's probably a little more consistent, you know, between that time period and today, you know, we're talking about a department that's trying to be accredited and in that line, you know, their SOP's are being put in black and white rather than — they may have been arbitrary, you know, in the past but now, you know, as a requirement to become [13] accredited, then everything is pretty much in black and white.

Q. And, the period again we're talking about which you have described as inconsistent discipline would have been that '91 period to '94 when Mr. Smith was employed as a Chatham County Police Officer.

A. Right.

Q. And, did you see a change in discipline when Chief Lowe arrived as to how police officers were disciplined concerning operating their vehicle in a safe manners?

A. If there was a difference, I really didn't — didn't notice.

Q. When did you first start noticing a difference — under whose command?

A. Under Lowe's command, that was a period of time where, you know, things were starting to be pretty much mandated by SOP.

Q. Before that —

A. Consistency, you know, I mean if you wrecked your car you knew you were going to lose it, you know, at the very least. I mean rather than in the past maybe nothing would have happened. The car would be fixed or whatever, but you know, you at least knew that if you wrecked your car, you know, you were going to lose your car.

Q. Well, let's talk —

[14] A. Beyond that, you know, I don't know that I've had any experience, you know, with somebody that wrecked their car repeatedly within such a short period of time that you would expect something worse than losing your car.

Q. But, prior — let's say the time that Mr. Smith was employed, during that time period, there was never really — you mentioned that you now know if you wrecked a car you know you're going to have repercussions, correct?

A. Right.

Q. But before that time when Mr. Smith was working there, was it kind of understood within the police force that there were no — you didn't know what would happen if you wrecked your car or demonstrated unsafe driving practices?

A. Well, you know, if you're talking specifically about Bryan Smith, you know, when he was under my — my supervision, I mean — I believe he had one accident. So, you know, whatever happened to him in previous incidents, you know, I don't know. I mean I have no idea what kind of discipline was given to him and where — and where in my mind or where in the police department's mind at what stage he

should have been as far as disciplinary action that had been taken toward him. I don't know what stage —

Q. I understand that. What I'm trying to find out, and what you've indicated to me if I'm hearing you correctly, during the period of time that Mr. Smith — and as a Chatham [15] County Police Officer — you've already told me there was no real consistency on disciplining unsafe drivers, correct?

A. Right.

Q. And, what I'm wanting to ask you about is was that kind of understood within the police force?

A. His immediate supervisor —

Q. I'm not talking about Mr. Smith. I'm talking about what you perceived.

A. Anyone's immediate supervisor would — and most of the supervisors on the watch were fairly level in their understanding of what discipline somebody needed, you know, for whatever infraction they may have committed. And, they would go on that recommendation, you know. As far as the department is concerned, you know, it may not have heed too consistent, but as far as what was recommended to the department, you know, that was a fairly consistent-type decision. In other words, if someone on my watch were to have an accident and, you know, what I may recommend as disciplinary action send it through the chain of command would be consistent with most — I would say all of the other watch supervisors. And, if it got to the point where it was progressing and didn't seem to be, you know, a problem. I know now that they will — just say

one difference. If you have an accident, you know, they're going to send you to Emergency Vehicle Operation, which is a school that they give . . .

* * *

APPENDIX J — DEPOSITION OF CORPORAL NEAL OWENS pp. 9–14, 21, 22

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NO.: CV496-211

NANCY KIMBALL KRIPPENE, INDIVIDUALLY AND AS THE EXECUTRIX OF THE ESTATE OF URBAN M. KRIPPENE, DECEASED,

Plaintiff,

vs.

RONALD LOWE, SR., AND AS CHIEF OF POLICE OF CHATHAM COUNTY POLICE DEPARTMENT; AND BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, AND CHATHAM COUNTY, GEORGIA POLITICAL SUBDIVISIONS OF THE STATE OF GEORGIA,

Defendants.

Transcript of Deposition of **CORPORAL NEAL OWENS**, taken by counsel for File Plaintiff at 124 Bull Street, Savannah, Georgia, reported by Lucy B. Roberts, Certified Court Reporter, on the 24th day of February, 1997, beginning a approximately 8:05 a.m.

Appendix J

APPEARANCES:

For the Plaintiff: FREDERICK S. BERGEN, ESQUIRE
123 EAST CHARLTON STREET
SAVANNAH, GEORGIA 31401

For the Defendant: EMILY GARRARD,
ASSISTANT COUNTY ATTORNEY
POST OFFICE BOX 8161
SAVANNAH, GEORGIA 31412

* * *

[9] (Plaintiff's Exhibit One, Affidavit, was marked for purposes of identification).

Q. You may be familiar with this already, but I'll give you a copy so I can — that's a copy of your Affidavit that you executed at the request of the County Attorney (tendering)?

A. Yes, sir.

Q. Let me ask you this. You stated in your Affidavit on May 12, 1992 you clocked Bryan Smith traveling thirty miles an hour over the speed limit twice within forty-five minutes.

A. Yes, sir.

Q. And, apparently the location was on the Islands Expressway.

A. Yes, sir.

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Q. And, do you recall what tine of day it was?

A. It was late — late evening between six and eight o'clock.

Q. Okay. And, were you just patrolling the area?

A. No, sir.

Q. Tell me about the circumstances.

A. At that time I was assigned to the DUI Task Force which is still out of the Traffic Unit. And, I was working — we either worked from six to two or from eight to four. [10] And, I was sitting in the median running a stationary radar.

Q. Okay. And, you say you clocked him traveling thirty miles an hour over the speed limit and tile speed limit was fifty miles an hour on Islands Expressway?

A. Yes, sir.

Q. So, he would have been going eighty miles an hour plus?

A. Yes. To the best of any knowledge, it was eighty miles an hour.

Q. Okay.

A. It may have been eighty-one, eighty-two, but it was around eighty miles an hour.

Q. Was he on a assigned call?

A. Not that I knew of. I had heard — his car number was 140. I had heard him — 140 ask Chatham was a 33 clear, which is a dinner break. And, they said, "10–4," and like I said, I was sitting in the median running radar and I knew he was assigned to Division One, which was Whitemarsh Island. Maybe five, ten minutes later I — I had a dual antenna radar, one in the front and one in the back. I had activated the radar. I was clocking the traffic coming up behind me and —

Q. — Which direction would you have been headed?

A. You're familiar with the boat ramp on Islands Expressway?

[11] Q. Right.

A. Right there at the draw bridge.

Q. Yes, sir.

A. I was sitting maybe 300 yards east of that bridge.

Q. Okay. So, you would have been at that time clocking the traffic going which direction? Out towards —

A. — Towards Savannah, like coming into —

Q. — Okay. Coming into Savannah.

A. Right. With the rear antenna. I was facing this way.

Q. You were facing towards Savannah?

A. Right.

Q. Towards the bridge.

A. Right. And, I was clocking with the rear antenna.

Q. Okay.

A. The radar was activated. Like I said, I don't recall the exact speed; around eighty miles an hour. It was moderate traffic. It wasn't heavy traffic. You know, there may have been four or five other cars, but I recall when Bryan came by and two or three minutes later he held out somewhere on his 33.

Q. Okay. But had he called for a 33 prior to when you clocked him?

A. Yes, sir.

Q. Okay. So, you were aware that Bryan Smith, car [12] number 140 at that time had permission to go to dinner.

A. Right.

Q. To get something to eat somewhere.

A. Right.

Q. And, then a few minutes later all of a sudden you clocked him on your radar going in excess of eighty miles an hour.

A. Right.

Q. He didn't have his blue lights on.

A. No, sir. —

Q. Did you pull him over?

A. No, sir.

Q. Why not?

A. Well, that's a marked unit pulling over another marked unit. I was going to get with Bryan when he cleared from his 33 and just tell him, say, "Look, you know, don't — if you see me sitting in the median, you know, don't do that."

Q. Is that kind of what the policy that you'all would do, is not to pull over unmarked — I mean a marked unit?

A. At the time we had had apparently a great deal of complaints on speeding patrol cars and I don't remember if it was written, I'm sure it was. The Traffic Unit officers were advised if we saw officers speeding to let their supervisor know. And, like I said, I was going to get with Bryan when [13] he cleared from his 33, you know, and see what kind of response I got out of him to see how I would take the next step.

Q. So, at that time as you understood, there had been complaints. Was it from other citizens?

A. Yes, sir.

Q. Of patrol cars speeding not responding to a call, I take it.

A. Apparently so.

Q. Okay. And, as I understand, either you believe it was written or you were told. Do you think it was written?

A. I don't recall. It's been so long ago, I don't recall.

Q. But you understood that you'all were supposed to do

A. — Right.

Q. — if you clocked somebody such as Bryan Smith who is going to lunch, speeding eighty miles an hour in a fifty-five mile an hour zone, report it to the supervisor.

A. Right.

Q. You weren't to write them up a ticket.

A. No, sir.

Q. Was it a — was it a policy not to write up a speeding ticket to a police vehicle?

A. Not that I know of.

[14] Q. But you understood that was the — for this particular time if you clocked a marked vehicle speeding, you were just to report it.

A. Right.

Q. Okay. You weren't to do any — you weren't to write a speeding ticket.

A. Not to my knowledge, we were not supposed to.

Q. And, that was a department-wide policy for the Traffic Unit.

A. I don't know if I'd call it a policy.

Q. Or practice.

A. That's what we were told to do.

Q. That's what you'all were told to do.

A. Uh-huh.

Q. Let's take it back. As I understand it, so that was the first time you caught him speeding that day.

A. Right.

Q. And, what did you do, just make a mental note of this incident? The first time. I mean you said you were just going to get with him later.

A. Right. Yes, sir. When I heard him clear from his 33, I was going to get with him.

Q. When you say, "Clear with his 33," what do you mean by that?

A. When he's done. When he's back —

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* * *

[21] A. You're just a regular Joe Smoe riding around.

Q. Isn't it true that he — Bryan Smith had not come back off of dinner break the second time that he was caught speeding?

A. Yes, sir. He had already cleared up. He went 10-8 with Chatham.

Q. Okay. He had already — okay — I'm glad you explained that to me. The first time he was cleared to go to dinner.

A. Right. He was in route to wherever he was going to eat.

Q. Okay. And, then the second time within forty-five minutes, had he gone back on patrol or was he still —

A. — No, he had already cleared up.

Q. Okay.

A. And, went 10-8 back in service.

Q. And, the second time he was not responding to an emergency call, was he?

A. No, sir.

Q. He wasn't using his blue lights, was he?

A. No, sir.

Q. So, he is subject to the same Georgia motor vehicle laws that you — that I'm subject to.

A. Same uniform rules of the road.

Q. Okay.

[22] A. Just like anybody else.

Q. However, he — if Fred Bergen or Emily Garrard was going down Islands Expressway at eighty or eighty-one miles an hour, you would have pulled us over, wouldn't you?

A. Definitely.

Q. And, you would have issued us a ticket.

A. Probably so.

Q. Okay.

(Note: Off the Record)

(Note: Record Resumed)

Q. (By Mr. Bergen) Basically you would have written up a citizen —

A. — Yes, sir.

Q. — for the same violations that Bryan Smith on both occasions.

A. Right.

Q. By virtue of the fact that he was a policeman on your same — with your same authority, you didn't write him up.

A. Right.

Q. Give him a ticket in other words.

A. Right.

Q. And, is that what the practice was —

MS. GARRARD. — I think he's already answered that question. You've already asked him that several . . .

* * *

APPENDIX K — DEPOSITION OF MAJOR WILLIAM FREEMAN pp. 50, 51

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NO.: CV496-211

NANCY KIMBALL KRIPPENE, INDIVIDUALLY AND AS THE EXECUTRIX OF THE ESTATE OF URBAN M. KRIPPENE, DECEASED,

Plaintiff,

vs.

RONALD LOWE, SR., AND AS CHIEF OF POLICE OF CHATHAM COUNTY POLICE DEPARTMENT; AND BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, AND CHATHAM COUNTY, GEORGIA POLITICAL SUBDIVISIONS OF THE STATE OF GEORGIA,

Defendants.

Transcript of Deposition of **MAJOR WILLIAM R. FREEMAN,** taken by counsel for the Plaintiff at 124 Bull Street, Savannah, Georgia, reported by Lucy B. Roberts, Certified Court Reporter, on the 6th day of February, 1997, beginning at approximately 1:00 p.m.

Appendix K

APPEARANCES:

For the Plaintiff: FREDERICK S. BERGEN, ESQUIRE
123 EAST CHARLTON STREET
SAVANNAH, GEORGIA 31401

For the Defendant: THOMAS J. MAHONEY. JR., ESQ.
POST OFFICE BOX 8161
SAVANNAH, GEORGIA 31401

* * *

[50] it.

Q. Okay. The next Exhibit, Number Twenty-six, deals with the January 20th, 1993 incident of the engine damage to 908, with attached Confidentials, does it not?

A. Yes, it does.

Q. You apparently — it was addressed to you by H. J. Lowery.

A. That's correct.

Q. And, did that result in any action?

A. Yes, it did. Not necessarily the water in the engine, but what was the result of that that happened.

Q. Do you know what — the second page of that Exhibit is missing. That Exhibit was attached as Exhibit Number Five

to Artis Thomas' deposition today. I apologize. This might be easier for you. I'm sorry.

A. That's okay. Okay.

Q. According to Captain Lowery, he states, "In checking Officer B. D. Smiths personnel file, I found that Officer Smith has a past history of bad driving habits," and summarized those habits. You were already familiar with those habits and had already previously advised Chief Davin of those problems, correct?

A. Of the May 13th, that's correct.

Q. And, now we have another incident involving disregard of orders which resulted in the operation of a [51] vehicle, correct?

A. That's correct.

Q. Did you feel that that was appropriate and sufficient discipline of Officer Smith on January 27th, '93?

A. The 180 days?

Q. Yes, sir.

A. Yes, I did.

Q. Again, it states, "When any more incidents of this type occur in the future more severe disciplinary action will be taken against Officer Smith."

A. That's what Captain Lowery has in his memo, that's correct.

Q. That seems to me — is that something you'all always say in these reports?

A. No. You can see it's progressively went up.

Q. When is it going to get to a point where he's off the force?

A. Didn't Chief Lowe fire him?

Q. After someone was killed. Is that what it took?

A. I don't know. Is that what you're saying?

Q. That's what I'm asking you.

A. Well, I can't answer that.

Q. Well, as to your recommendation —

A. — He had a wreck there and I suppose that's what Chief Lowe fired him about.

* * *

APPENDIX L — DEPOSITION OF CHIEF RONALD LOWE p. 78

IN TIIE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NUMBER CV496-211

NANCY KIMBALL KRIPPENE, Individually and as the Executrix of the Estate of URBAN M. KRIPPENE, deceased

Plaintiff

vs

RONALD LOWE, Sr., Individually and as Chief of Police of Chatham County Police Department

and

BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA

and

CHATHAM COUNTY, GEORGIA Political Subdivisions of the State of Georgia

Defendants

DEPOSITION OF
RONALD LOWE, SR.
JANUARY 22, 1997

Appendix L

* * *

[78] that more severe disciplinary action be taken against Officer Smith."

Now I know you were not there at that time, but that is a similar type memorandum as we saw earlier, back in 1991.

A. Right.

Q. In which he stated, if "any more accidents occur in the future I recommend to you that more severe disciplinary action be taken against Officer Smith."

Well, certainly this has occurred since August of '91, and here we are seeing another memo of April the 23rd of '93, in which no action is being taken against the man.

A. I understand that, counselor, but see who it's to?

Q. I know it is not to you.

A. Right.

Q. But certainly you and I can agree that Major Freeman was aware of the problems Bryan Smith was exhibiting in the vehicle.

A. I would say according to his Confidentials, yes.

Q. And certainly Chief St. Lawrence was aware?

A. They read them, yes.

Q. And did you replace Al St. Lawrence?

* * *

APPENDIX M — DEPOSITION OF CHIEF AL ST. LAWRENCE p. 30–31

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NO.: CV496-211

NANCY KIMBALL KRIPPENE, INDIVIDUALLY AND AS THE EXECUTRIX OF THE ESTATE OF URBAN M. KRIPPENE, DECEASED,

Plaintiff,

vs.

RONALD LOWE, SR., AND AS CHIEF OF POLICE OF CHATHAM COUNTY POLICE DEPARTMENT; AND BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, AND CHATHAM COUNTY, GEORGIA POLITICAL SUBDIVISIONS OF THE STATE OF GEORGIA

Defendants.

Transcript of Deposition of **SHERIFF AL ST. LAWRENCE,** taken by counsel for the Plaintiff at 124 Bull Street, Savannah, Georgia, reported by Lucy B. Roberts, Certified Court Reporter, on the 5th day of February, 1997, beginning at approximately 2:10 p.m.

Appendix M

APPEARANCES:

For the Plaintiff: FREDERICK S. BERGEN, ESQUIRE
123 EAST CHARLTON STREET
SAVANNAH, GEORGIA 31401

For the Defendant: THOMAS J. MAHONEY, JR., ESQ.
POST OFFICE BOX 8161
SAVANNAH, GEORGIA 31401

* * *

[30] because of this upcoming special election that I was going to get involved in. I had taken some time off and so forth, but I don't — but even if I hadn't I couldn't recall all of the Confidentials and reports that are written on people; maybe they are two or three minutes late for work or something of this nature. I don't recall those things.

Q. But nonetheless — that's fine. Now, did this — when this occurred — when you received the August 14th, '91 Memorandum, do you recall if you even talked with Major Freeman as to —

A. — I don't recall. I'm sure I probably did, but I don't — I can't sit here and tell you that I specifically — that we talked and what we talked about. I might have told him at the time, "I've had about enough of this guy." I don't know. I mean I don't recall, you know.

Q. Well, did it start to show to you that this man may have been posing a problem being employed with the Chatham County Police Department?

A. Well, that certainly, you know, that could have been developing, but you know, I would still be guided by what Major Freeman's recommendation would be to me, unless it was an incident like an incident I described to you earlier; some theft involved or something of that nature. Then it wouldn't have made no difference whether he had recommended anything or not. I know what I would have done.

[31] Q. You would have fired him.

A. Absolutely.

Q. But from what we've seen developing up from August 14th of '91, would this have given you concern about this police officer?

A. Yeah, that's the reason why they were paying attention — particular attention to what he was doing.

Q. This is the next Exhibit, Number Eleven. It is to you from Lieutenant R. L. Oliver, Internal Affairs, dated September 20, 1991. If you would take a minute to read it, I have a couple of questions (tendering).

A. I guess is the first time I've seen this. I probably seen it back then. I don't recall.

Q. As to the normal course of things, if it was sent to you, you would have read it. It would have come across your desk, as you've referred to it, correct?

A. Yeah.

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Q. And, I presume — and correct me if I'm wrong — you would have read this at that time or there abouts August — or September 20th of '91?

A. Uh-huh.

Q. Correct?

A. Yeah.

Q. All right. This concerns, from what you've read, a harassment complaint by apparently a former girlfriend of . . .

* * *

APPENDIX N — DEPOSITION OF MAJOR WILLIAM FREEMAN pp. 46, 47

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NO.: CV496-211

NANCY KIMBALL KRIPPENE, INDIVIDUALLY AND AS THE EXECUTRIX OF THE ESTATE OF URBAN M. KRIPPENE, DECEASED,

Plaintiff,

vs.

RONALD LOWE, SR., AND AS CHIEF OF POLICE OF CHATHAM COUNTY POLICE DEPARTMENT; AND BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, AND CHATHAM COUNTY, GEORGIA POLITICAL SUBDIVISIONS OF THE STATE OF GEORGIA

Defendants.

Transcript of Deposition of **MAJOR WILLIAM R. FREEMAN**, taken by counsel for the Plaintiff at 124 Bull Street, Savannah, Georgia, reported by Lucy B. Roberts, Certified Court Reporter, on the 6th day of February, 1997, beginning at approximately 1:00 p.m.

Appendix N

APPEARANCES:

For the Plaintiff: FREDERICK S. BERGEN, ESQUIRE
123 EAST CHARLTON STREET
SAVANNAH, GEORGIA 31401

For the Defendant: THOMAS J. MAHONEY, JR., ESQ.
POST OFFICE BOX 8161
SAVANNAH, GEORGIA 31401

* * *

[46] A. What potential? That he was a danger?

Q. Yes, in operating vehicles to the motoring public.

A. No. No more than anyone else.

Q. Despite what you knew about his driving habits?

A. No, I did not.

Q. Do you believe he was demonstrating at that time unsafe driving habits?

A. If he had been doing safe driving habits, he wouldn't have gotten a thirty day take home privilege revoked.

Q. So, I guess the answer to my question is yes.

A. Yes.

Appendix N

Q. Exhibit Number Twenty-three is Inter-Office Correspondence to Chief Davin to yourself — I mean from yourself dated May 22, 1992. Now, you noted a correction in one of the sentences, did you not?

A. Yes, I did. Are you talking about the negative retention?

Q. Right.

A. Should have been negligent retention.

Q. Okay. The sentence should read due to the number of accidents it seems that we may be dealing with a negative — a negligent retention problem is what it should say.

A. Yes, that's what it should say.

Q. Okay. And, then you stated, "I would also [47] recommend that if Officer Smith has any more accidents that his employment at the Chatham County Police Department be terminated."

A. That's correct.

Q. This was a response — immediate response on this memorandum was regarding the speeding violations.

A. The speeding and put it all together, yes, the speeding.

Q. Okay. And, when you talk about dealing with a negligent retention problem, you're talking about the County maintaining — retaining an employment who was negligent on its force.

Appendix N

A. I was talking about a individual that already had two accidents that were his fault. He had already been caught twice in one day speeding. And, that we may have a problem with this employee.

Q. Well, a negligent retention problem means you're retaining someone who is negligent.

A. Absolutely. That's what the word means.

Q. Okay. Did Chief Davin give you any response to your warning to him?

A. I don't recall.

Q. We were talking about the negligent retention problem with Officer Smith. This was basically something you were trying to make the Chief aware of, correct?

* * *

APPENDIX O — EXPERT WITNESS REPORT OF DANIEL S. RAY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CIVIL ACTION NO. CV496-211
[JURY DEMANDED]

NANCY KIMBALL KRIPPENE, Individually, and as the Executrix of the Estate of URBAN M. KRIPPENE, deceased,

Plaintiff,

vs.

RONALD LOWE, SR., Individually and as Chief of Police of Chatham County Police Department; and BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA and CHATHAM COUNTY, GEORGIA, Political Subdivisions of the State of Georgia,

Defendants

EXPERT WITNESS REPORT OF DANIEL S. RAY

NOW COMES Danny Ray, and pursuant to *Federal Rules of Civil Procedure 26(2)(B),* and provides this Court in compliance with Local Rule 8.6(a)(4) for the Southern District of Georgia, this Expert Witness Report as follows:

1. *Identity of Expert Witness.*

Daniel S. Ray
Post Office Box 1057
Perry, Georgia 31069

Appendix O

2. *Complete statement of all opinions to be expressed and the basis and reasons therefore.*

Response:

Mr. Ray is of the opinion, based upon the documents identified in Response #3 of this Report, that the Chatham County Police Department through its Chief and Supervisors failed to take appropriate action to train, re-train, discipline and terminate APO Bryan Smith from the Chatham County Police Department prior to the fatal collision with Urban Krippene on November 18, 1994 when Officer Smith clearly demonstrated an habitual failure to follow orders, take commands, obey the traffic laws of the State of Georgia and Chatham county Police Department Standard Operating Policies and Procedures, as well as the Chatham County Ordinances in carrying out his duties and operating a Chatham County Police Vehicle. It is further Mr. Ray's opinion, that as a result of the Chatham County Police Department's failure to take appropriate and necessary action against Officer Bryan Smith, that Chatham County Police Department adopted, adhered to and ratified these inappropriate actions and created a policy of not properly training, re-training, disciplining and terminating Officer Bryan Smith which resulted in Officer Bryan Smith's continued inappropriate and unsafe operation of Chatham County Police Vehicles which created a danger to the motoring public of chatham County prior to and including November 18, 1994.

Appendix O

3. *The data or other information considered by the witness in forming his opinions.*

Response:

a. Bryan D. Smith's Employment File with the Chatham County Police Department and Chatham County Sheriff's Department.

b. Georgia Uniform Motor Vehicle Accident Report of November 18, 1994.

c. Chatham County Staff Accident/Incident Report of Cpl. D.E. Barnes.

d. APO B. Smith's Chatham County Police Departmental Incident Report.

e. Chatham County Police Department's Inter-Office Correspondence from APO S.J. Simpkins to Captain H.J. Lowery dated November 23, 1994.

f. Chatham County Police Department Inter-Office Correspondence from Sgt. A.F. Thomas of Internal Affairs to Chief Ronald Lowe, Sr. dated November 23, 1994.

g. Chief Ronald Lowe, Sr.'s letter dated November 29, 1994 to APO B.D. Smith.

h. Chatham County Police Department Inter-Office Correspondence from Sgt. A.F. Thomas of Internal Affairs to Chief Ronald Lowe, Sr. dated December 21, 1994.

Appendix O

i. Chief Ronald Lowe, Sr.'s letter dated January 12, 1995 to APO B.D. Smith.

j. Chatham County Police Department SOP Manual Section 10-040.

k. January 1, 1990 Chatham County Personnel Ordinance and Personnel Procedures Manual.

4. *Any exhibit to be used as a summary of or support the opinions.*

Response:

None at this time; however, Mr. Ray reserves the right to Supplement this Response.

5. *The qualifications of the witness including a list of all publications authored by the witness within the preceding ten (10) years.*

Response:

Mr. Ray has over 25 years experience in Law Enforcement. Mr. Ray also served from March 1, 1991 to February 21, 1996 as the Senior Agent In Charge of Region Eight of the Georgia Peace Officer's Standards and Training Council, which is the State Licensing Authority for the State of Georgia for all Peace Officers, including all Chatham County Police Officers. Mr. Ray, while serving as Senior Agent in Charge of Region Eight of the Georgia Peace Officer's Standards and Training Council, was responsible for all Peace Officer Investigations in Region Eight relating to certification/criminal charges, annual personnel audits of all departments, investigate and report to the Governor

or Attorney General regarding complaints against Departments or officers, assist Departments with technical matters relating to Peace Officers Standards and Procedures, inspect academies on yearly basis relating to standards and rules, evaluate instructors in classroom environment to ensure all Georgia P.O.S.T. Rules and Regulations are followed, and investigate backgrounds of individuals with problems indicated on application.

Also, Mr. Ray served as Assistant Post Commander for Georgia State Patrol from August 1989 to March 1991 with responsibilities of the day to day operations of the Georgia State Patrol Post Departments, investigate applications from Post Territory, check accuracy of investigated reports, liaison with Judicial Agencies, routine patrol of all routes and Post Territory and review of Standards and Procedures relating to the Georgia State Patrol.

Mr. Ray has not offered any publications within the preceding ten years.

6. *The compensation to be paid for the study and testimony.*

Response:

$100.00 an hour plus expenses.

Appendix O

7. *A listing of other cases the witness has testified as an expert witness at trial or by deposition within the preceding four (4) years.*

Response:

Mr. Ray has not testified at trial or deposition within the preceding four years.

This 19th day of December, 1996

s/ Daniel S. Ray
DANIEL S. RAY